



August 2015

'BOGUS SELF-EMPLOYMENT'

The TEEU are waging a war against Non Compliant Contractors, Sub-Contractors and Recruitment Agencies who undermine our National Collective Employment Agreements within the Mechanical & Electrical Contracting Industries and the Construction Industry.

Currently the focus of the Union is directed towards tackling the practice of 'Bogus Self-employment' and the upsurge in non-compliant Recruitment Agencies who are targeting our industries.

So what is 'bogus Self-Employment'?

When someone starts up a business they take on responsibilities and risks attached with running a business which may pay off or may cost the individual. They may choose to establish their business as a sole trader or a limited company and they may choose to employ workers as they develop their business. The work they carry out is done so under their control alone and ultimately they answer to the client.

This is a genuine case of self-employment.

Bogus self-employment is however when an individual Worker is employed by another Contractor under the guise of being a sub-contractor for payment purposes only.

This individual worker must portray himself as a standalone company for the purpose of deducting tax at a lesser rate when in fact they carry out the same work under the same instructions as a directly employed Worker. The main contractor (or principal contractor) must declare the individual as a sub-contractor

through the RCT-1 process. (Sometimes a bogus self-employed worker will even be required to provide items like their own power tools in an attempt to make this arrangement look even more credible).

What are the affects of bogus self-employment?

The table below shows some of the key differences between direct employment for a worker and that of a bogus self-employed arrangement.

DIRECTLY EMPLOYED WORKER	BOGUS SELF-EMPLOYED WORKER
● Gets paid an agreed rate of pay including Overtime rates	● Gets paid whatever the main contractor thinks they are worth
● Is provided with a scheme for pension/sick pay and death in service benefits (CWPS) and the Employer contributes on behalf of the employee	● Is not provided with CWPS Scheme benefits or employer contributions. Also the CWPS will not accept "self-employed" individuals into the scheme.
● Has the protections of the employment legislation for matters such as; Redundancy/Unfair dismissals/ Payment of Wages/Organisation of Working time Act/Pensions Act and many more	● Has absolutely no protections/Can be dismissed without a minutes notice and the Worker has no recourse/Receives no redundancy entitlements and has no protection in the event that the contractor refuses to pay for work done.
● Pays tax based on Revenue rates of deduction and individual tax credits	● Tax is deducted under the RCT-1 method which allows for the main contractor to deduct amounts of tax. The Worker must then prove that the correct amount of tax has been paid or else they must address any shortfall directly.
● PRSI is deducted from wages and entitlements such as Jobseekers allowance/disability benefit/dental and other medical related benefits are available to claim.	● PRSI related entitlements are only available in some circumstances
● Gets paid holidays and public holidays.	● Get absolutely no holiday pay whatsoever.

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APPRENTICES GO FREE

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Tackle Bogus Self-Employment and Recruitment Agencies

Example of Bogus Self-Employment;

Joe is a qualified Plumber who worked directly with Big Time Plumbing Ltd for 10 years. Joe was recently made redundant and received his redundancy payment of 2 weeks per year (capped at 600) plus a bonus week. Out of work for over a month Joe starts to feel a little desperate and when he receives a call from his old boss he jumps at the chance to get back to work.

However Big Time Plumbing Ltd. has offered him work as long as he becomes "Self-employed". Joe has never ran a business before and doesn't know what to do. His boss tells him all he needs to do is turn up for work as he did before and they'll sort the rest out from there.

When Joe turns up for work he re-joins his old colleagues and takes the instructions as he did before. He fits pipe with his colleagues, he welds alongside his colleagues, takes the same tea breaks as his colleagues and in fact it's just like old times. When pay day comes around Joe is asked to submit an invoice (just like his time sheet) and then he is paid. Only now he is paid different to his colleagues who are still directly employed. He has no pay slip outlining the payments made for basic hours, overtime rates, travel time, pension and the deductions for tax and prsi contributions.

Joe receives a flat rate amount.

Unhappy with his lot he confronts Big Time Plumbing Ltd. and he is told that he can take it or leave it. Joe trundles on with the work until one day out of the blue he is told by Big Time Plumbing that "we no longer need your services" and "you are finished on site with immediate effect".

Joe gets no notice and no redundancy payment.

Unemployed again, Joe goes to sign on only to realise that he may not be entitled to Job Seekers allowance because he was not making prsi contributions and neither were Big Time Plumbing Ltd. Sometime later Joe receives a letter from Revenue explaining that as he was "self-employed" he has a shortfall in his tax contributions which he is now liable.

*Joe asks himself the following questions; Was I ever any different from my colleagues who were directly employed? **Answer: NO***

*Why are my entitlements less than my colleagues who were directly employed? **Answer: They shouldn't be***

*If my boss told me when to start work, when to finish work, what work to do, when to take breaks and how much I was going to receive, then was I not really a direct employee? **Answer; YES***

*Because Joe was employed through an arrangement which was entirely bogus he may think he's getting near the going rate when in fact this is only because he may be paying less tax initially but **overall he lost out on his entitlements.***

Unfortunately too many Craft Workers get sucked into these arrangements believing "well at least it's a job" when in fact they are now employed without the protections that come with being directly employed.

The TEEU solution: If you work in the Mechanical/Electrical contractor industries then you must receive your full employment entitlements as prescribed by the National Collective Employment Agreements. Protect your job at all costs and if you are forced into "bogus self-employment" call the Union immediately so we can do something about it together.

The other scourge of our industry is the non-compliant Recruitment Agency

At present there are a number of Recruitment Agencies who prey on unemployed Mechanical & Electrical Craft Workers by plaguing them with text messages offering them employment for rates of pay as low as €10 per hour.

These agencies do not provide terms and conditions of employment as prescribed by the National Collective Employment Agreements and they are ANTI-UNION.

They do however charge "Union rates" to some Contractors without paying the entitlements to Workers.

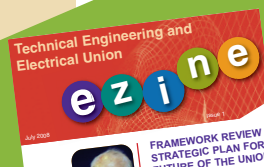
They provide no travel time, no pension /sick pay or death in service benefits and very often their methods of deducting tax and prsi causes grief for workers long after the job is done.

We have had TEEU members contacting us telling us that Revenue have been in touch with them over a shortfall in tax contributions 12 months after finishing with an agency and they are now liable for it.

Even worse they do not seek qualifications to prove that the Craft Workers are indeed qualified.

The Union has come across countless cases of Apprentices who were unemployed or had failed exams but were employed by these agencies despite the fact that Apprentices must be employed by an approved employer.

These non-compliant Recruitment Agencies are not approved to employ Apprentices and therefore time spent working for these outfits does not count as time served.



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AGENCY WORKERS

So how do we tackle Bogus Self-Employment and Recruitment Agencies?

The answer is straightforward, the TEEU are coming after those Contractors who use these methods to undermine our agreements and if you have been unfortunate enough to get sucked into one of these jobs or you decided to take a job so that you can tackle the problem then you need to contact the Union today.

The first step is to contact

**the confidential hotline on
01 8719 903**

Then you need to take a stand with your Union to ensure that the job you have remains yours along with the entitlements provided for by the Collective Agreements.

- **Remember, if your employer has agency workers or bogus self-employed on site it's only a matter of time before your job is under threat.**
- **If you are employed by one of these agencies you have no future on the terms and conditions they are providing and you are destroying your own industry.**

THERE CAN BE NO MORE EXCUSES.

Your Union is taking action against bogus self-employment and non-compliant recruitment agencies and you have to play your part in the fight back.

Contact the Union today and let's protect our industry and our future.

[5.1.15] Agency Workers

Last Updated January 2015

1. Taxation of individuals engaged through agencies

1.1 Background

There can be a perception that workers engaged through an employment agency cannot be regarded as employees for taxation purposes. Revenue does not regard the taxation of workers engaged through agencies any differently to the taxation of workers engaged by any other means. Over the years, PAYE/PRSI has been operated by agencies where the agencies are obliged to pay the person placed with a client. In contrast, PAYE/PRSI has been operated by the client where the client is obliged to make the payment to the person placed with them.

1.2 Employee/Self-Employed

Where there is a doubt or a disagreement as to the status of an agency worker, it is necessary to examine each case by reference to the '*Code of Practice for Determining Employment or Self-Employment Status of Individuals*', prepared by the Employment Status Group and updated in 2007 by the Hidden Economy Monitoring Group.

The written terms of the engagement need to be considered, including any oral, implied or inferred terms (the written terms may not necessarily describe the full relationship between the parties) and any other relevant information deemed necessary to assist in forming an opinion as to the status of the worker.

2. Operation of PAYE/PRSI

Where the agency worker is regarded as an employed person, there can be a perception that there is difficulty in determining who the employer is for the purpose of operating PAYE/PRSI. The PAYE system has always recognised the uniqueness of a '*paying employer*', who may not be an employer in the strict sense. For example, a pensioner can be an '*employee*' and the body paying the pension can be an '*employer*' for the purpose of operating the PAYE system.

Chapter 4, Part 42 of the Taxes Consolidation Act (TCA) 1997 and the Income Tax (Employments) (Consolidated) Regulations 2001 deal with the administration of the PAYE system. Section 983 TCA 1997 contains the following definitions:

- *Employer* means any person paying any emoluments
- *Employee* means any person in receipt of emoluments

5.1.15

- *Emoluments* means anything assessable to income tax under Schedule E, and references to payments of emoluments include references to payments on account of emoluments.
- Consequently, the person who is contractually obliged to make the payment to an employed agency worker is the employer for the purpose of collecting income tax, USC and PRSI through the PAYE system.
- The VAT treatment of employment agencies is dealt with in *Revenue's Tax and Duty Manual 5.68*.

CURRENT RATES OF PAY

MECHANICAL TRADE Members/Apprentices Rates since 1st April, 2007

1st year out of time	€20.63
2nd year out of time	€20.92
3rd year out of time	€21.06
4th year out of time	€21.18
5th year out of time	€21.31
6th year out of time	€21.42

Apprentices Rates of Pay

1st Year	€5.73
2nd Year	€8.61
3rd Year	€12.91
4th Year	€15.49

Note: Apprentices must be registered with SOLAS within 2 weeks of commencing employment. There should be no pre-apprenticeship probation. Probationary period should be included in four year apprenticeship

ELECTRICIANS/APPRENTICES Members/Apprentices Rates since 1st April, 2007

1st year out of time	€20.74
After 1 years' service	€21.01
After 2 years' service	€21.15
After 3 years' service	€21.26
After 4 years' service	€21.38
After 5 years' service	€21.49

Apprentices Rates of Pay

1st Year	6.22
2nd Year	9.33
3rd Year	13.48
4th Year	16.59

Chargehand 10% (above hourly rate)
Foreman 20% (above the hourly rate)

Note: Apprentices must be registered with SOLAS within 2 weeks of commencing employment. There should be no pre-apprenticeship probation. Probationary period should be included in four year apprenticeship

CONSTRUCTION Workers/Apprentices Rates since 4th February, 2011

Craft Workers	€17.21
Construction Operatives	
Grade A	€16.69
Grade B	€15.66
Grade C	€15.14
Grade D	€13.77

Apprentices Rates of Pay

1st Year	€5.73
2nd Year	€8.61
3rd Year	€12.91
4th Year	€15.49

Note: Apprentices must be registered with SOLAS within 2 weeks of commencing employment. There should be no pre-apprenticeship probation. Probationary period should be included in four year apprenticeship

REDUNDANCY

Redundancy occurs where an employee's position ceases to exist and the employee is not replaced. Any employee aged 16 or over with 104 weeks' continuous service with an employer is entitled to a statutory redundancy payment in this situation.

An employee who has received a 'Notice of Proposed Dismissal for Redundancy (Form RP50 (Part A))' may decide to leave the employment earlier than the date of redundancy notified to him/her, for example to take up an offer of alternative employment. If he/she decides to leave, there is a risk that he/she may lose any entitlement to redundancy payments unless they notify their employer in writing using **Form RP6 - Leaving Before a Redundancy Expires**. An employer has discretion as to whether to grant such a request or not. It should be noted that leaving during the notice period without the employer's agreement may affect a person's entitlement to a redundancy payment.

If you have been laid off or on short-time working for 4 weeks or more, you may give your employer notice of your intention to claim a redundancy payment on **Form RP9 - Lay Off and Short Term Procedures**.

If an employer has not paid the employee his/her redundancy lump sum, he/she should apply to the employer for it using form **RP77 - Claim by an Employee against an Employer for a Lump Sum or Part of a Lump Sum**. If your employer still refuses to pay it, you can apply to the Department of Social Protection for direct payment from the Social Insurance Fund.

The statutory redundancy payment is two week's gross pay per year of service up to a ceiling of €600 per week plus one week's pay, which is also subject to the ceiling of €600. This payment is tax-free. For information on how to calculate your entitlements please go to the redundancy calculator on the **Department of Social Protection** website. Some employers may make redundancy agreements above the statutory rate.

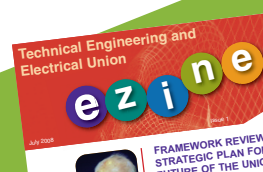
For information on the status of redundancy lump sum or rebate claims submitted for payment you can contact the Redundancy Payments Section directly on 1890 800 699. Further information will also be published on **www.welfare.ie**

For a copy of the relevant redundancy forms please go to the redundancy page on the **Department of Social Protection website**.

Information on Collective Redundancies can be found in NERA's **Collective Redundancy Fact-sheet**.

Use these links to view or download copies of the **Redundancy Payments Act, 1967** or the **Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act, 2007**.

(July Source WRC Web Site)



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For Members & their Family

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www.teeu.ie

click on the Free Legal Aid link

Additional TEEU Benefits

- Strike Pay
- Retirement Grant
- Mortality Benefit
- Gaeltacht Scholarships
- Distress/Incapacity Benefit
- Benevolent Fund (CWPS)

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www.teeu.ie



For a full list of benefits for members go to www.teeu.ie and click on the Members Services link and the Members Benefits link



TEEU MEMBERSHIP SERVICES



NOTICE

CONSTRUCTION INDUSTRY DEATH IN SERVICE CWPS LUMP IMPROVEMENT

As and from 1st May 2015, the Death in Service benefit for members currently paying into CWPS increased from €63,500 to €100,000.

This is a huge improvement and in the Death in Service benefit. There is also an extra benefit of €3,175 payable for each dependent child.

These benefits will be paid to a member's next of kin along with the total value of the member's accumulated CWPS Pension Account.

To be eligible for same all contributions due to be paid into the scheme at the time of death.

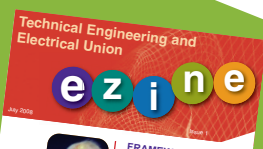
Contributions for at least 26 weeks up to date of the death.

For further information go to
www.cwps.ie

or contact the Scheme on
01 4977663

or contact the TEEU
01 8719903

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